

## Submission to the NBN non-commercial services funding options: Final Consultation Paper, October 2015

This submission is directed to Chapter 9, and specifically the following issue:

### 9.1 Telecommunications Industry Levy and the Universal Service Obligation

The May 2015 Consultation Paper noted: “[i]n the context of NBN non-commercial service funding arrangements, this gives rise to a policy question of whether it would be appropriate over time to combine industry funding arrangements for the delivery of voice and broadband services.”<sup>1</sup> The very simple answer to that question is (emphatically) – “Yes and do it now.”

The current TIL arrangements and USO are but a means to an end, which is that users have appropriate access to online services and content and communications with others. Consideration of issues arising in respect of the TIL and USO therefore should be predicated on the need to *recognise and support* access to the internet *per se now* for all Australian residents and citizens. It is the ability to access the internet as and when an individual desires, and to receive the same level of service as others receive that is the vital consideration, and which should be the focus of related policy/ies, law/s and funding arrangement/s.

Acknowledging the (not insubstantial) cost of infrastructure and service provision, the focus for policy makers should not be as to whether the obligation to enable internet access is a retail or wholesale one. Nor should it be on whether a service provision is badged for a particular technology-delivery or -use specifically (in the case for example of the USO’s focus on voice telephony service provision, or as to the reference to satellite as a mechanism for service delivery). The later approach, in particular, in the context of both the immediacy and long term need to ensure individuals’ access to the internet is, it is suggested, inherently flawed as technology always outpaces the law (and policy). For example, where USO policies and/or legislation refer only to slower speeds these are not adequate to address issues of digital equality or to support access to future networks.<sup>2</sup>

The position that issues arising now are better left for another day also is misguided. As significant areas of the rest of the world continue to surpass Australia in terms of internet access and digital engagement, the need to ensure appropriate internet access for all now in Australia is vital. Although the intention is for the NBN to be the “broadband infrastructure provider of last resort”,<sup>3</sup> it will be many years until “NBN deployment has reached maturity”.<sup>4</sup> Therefore to delay consideration of relevant issues merely disadvantages individuals specifically and Australia as a whole.<sup>5</sup> The extension of the USO to internet access *per se* will mean that individuals, irrespective of location, will be able to attain and maintain an appropriate level of physical access to the internet and lack of financial capacity will not constrain their engagement in the digital economy. Such action also would “promote the regional spread of Internet services and stimulate the demand for broadband”.<sup>6</sup>

<sup>1</sup> Bureau of Communications Research, “NBN non-commercial services funding options”, Consultation Paper, 8 May, 2015, p.31.

<sup>2</sup> Sindic de Greuges de Catalunya. 2013. “Broadband Internet Access as a Universal Service: Digital Equality.” Reprint by The Catalan Ombudsman. Accessed August 12, 2014.

<sup>3</sup> Bureau of Communications Research, “NBN non-commercial services funding options”, Consultation Paper, 8 May, 2015, p.33.

<sup>4</sup> Bureau of Communications Research, “NBN non-commercial services funding options”, Final Consultation Paper, October 2015, p.75.

<sup>5</sup> Craddock, L. 2015. *Individuals, Innovation, and the Internet: Why Access is Essential* (Common Ground Publishing, USA).

<sup>6</sup> Prasad, R. 2013. “Universal Service Obligation in the Age of Broadband.” *The Information Society: An International Journal* 29(4):227-233.

While the USO remains limited to voice services, this will not provide the best assistance to an individual seeking access to the internet. Despite the cost and other issues that must be overcome, for example the risk of “*reduced competition*”,<sup>7</sup> extending the USO to internet access *per se*, rather than relying on the voluntary involvement of providers, may assist in the adoption of broadband and access by individuals to the internet and thus their engagement in the digital economy. It also will enable and support those living in rural areas or with financial or other access constraints.

Importantly, it must be remembered that implementation, or extension, of a USO to internet access *per se* is not the end goal. Ultimately, any policy or program other than a holistic and individual focused access policy regime is but a support mechanism along the road to the end goal. That end goal, which will be facilitated by an internet access *per se* USO, is a digitally literate and engaged citizenry. As a corollary, this will enable Australia to have a fully functioning digital economy.<sup>8</sup>

The rights of individuals to self-determination and participation in social, political and economic life are fundamental.<sup>9</sup> In the digital economy, effective internet access requires direct State recognition *and* support.<sup>10</sup> Quite simply – access to the internet, and high-speed broadband, by whatever means are “*essential services*” and “*should be treated as any other utility service*”.<sup>11</sup> The need to ensure access the internet to all individuals is not one that can be left or delegated to commercial parties. Noting the examples provided in respect of service provision in rural areas,<sup>12</sup> there now are a number of jurisdictions, including those mentioned, which have adopted or incorporated obligations regarding broadband internet access into their USOs. These also include Finland, Chile, India, Jordan and Malaysia.

Having progressed the discussion this far, the BCR now should take the opportunity to provide very clear guidance to the government as to the way forward to enabling Australia in its future digital economy. A USO enabling internet access *per se* will be an essential part of that future.

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<sup>7</sup> Gans J, 2008. ‘Creating an efficient national broadband network’ in M Jones (Ed) Australia’s Broadband Future: Four doors to greater competition, Growth 60, September 2008, CEDA, 26.

<sup>8</sup> Craddock, n.5.

<sup>9</sup> *International Covenant on Civil and Political Rights* 1966 Articles 1, 3 and 25; and Human Rights Council’s *Resolution on the Promotion and Protection of Human Rights on the Internet* of July 2012, Articles 1 and 3.

<sup>10</sup> Craddock, n.5.

<sup>11</sup> Craddock, n 5, p.192. Also see the position in the United Kingdom, where the House of Lords called for the UK government to “*define the internet as a utility service that is available for all to access and use.*” See - House of Lords (2015) “*Make or Break: The UK’s Digital Future*”, *House of Lords Select Committee on Digital Skills*, Report of Session 2014-15, HL Paper 111, 17 February 2015, p.29 at Paragraph 43:

*We agree with our witnesses who urged that the Government should define the internet as a utility service that is available for all to access and use. This is the bedrock of digital competitiveness.*

Also see p.95 at Paragraphs 305-306:

305. *Objective 1: The population as a whole has unimpeded access to digital technology.*

306. *This includes:*

(a) *facilitation of universal internet access: the internet is viewed as a utility; and*

(b) *removal of ‘not-spots’ in urban areas.*

<sup>12</sup> Bureau of Communications Research, “NBN non-commercial services funding options”, Final Consultation Paper, October 2015, p.76.